

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	CRIMINAL ACTION NO.
v.)	2:17cr325-MHT
)	(WO)
WILLIE BERNARD SMITH)	

OPINION AND ORDER

This cause is before the court on defendant Willie Bernard Smith's unopposed motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for December 4, 2017, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Smith in a speedy trial. As stated in the motion to continue, defense counsel on November 15, 2015, was involved in a serious automobile

accident with an 18-wheeler truck, in which she sustained a fractured clavicle and other injuries. Defense counsel was directed by doctors to not return to work for seven days, and will apparently undergo a series of additional treatment and monitoring in the next few weeks. In addition, the court notes, as in its previous order to continue (doc. no. 28), that Smith lives in Georgia and therefore requires significant time and effort to meet with defense counsel. Accordingly, a continuance is warranted to allow Smith's counsel the opportunity to prepare fully and effectively for trial. The government does not object to a continuance.

Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant Willie Bernard Smith (doc. no. 41) is granted.

(2) The jury selection and trial, now set for December 4, 2017, are reset for January 16, 2018, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 27th day of November, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE